

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Michael Klein,

Complainant,

vs.

SBC Pacific Bell,

Defendant.

(ECP)
Case 02-04-043
(Filed April 17, 2002)**OPINION GRANTING RELIEF****1. Summary**

Michael Klein (Complainant) alleges that SBC Pacific Bell charged him for local toll calls which should have been local calls to access his Internet Service Provider (ISP). SBC Pacific Bell alleges that its charges were correct. In this decision, we grant Complaint's request for relief. This matter was decided on the pleadings filed by the parties.

2. Positions of the Parties

Complainant disputes charges of \$389.70 for local toll calls automatically dialed by his computer modem to 415-444-6030, as shown in his SBC Pacific Bell March 13, 2002 billing statement. Complainant claims that his computer modem was programmed to dial-up 415-746-1030, a local call to access his ISP. Complainant says that his modem was checked by his own computer expert. He

also says that following an exhaustive investigation by Verio and Sprint, they contend that the calls could not have been forwarded or re-routed.

SBC Pacific Bell denies that it re-routed the disputed calls and says that Complainant's recourse is not with SBC Pacific Bell, but instead with his ISP. SBC Pacific Bell submits that regardless of whether Complainant programmed the number 415-444-6030 into his computer or whether it was automatically dialed as a result of software provided by his ISP, SBC Pacific Bell properly billed Complainant for direct-dialed calls placed by his modem to that number.

3. Discussion

The facts presented here indicate a serious problem in regard to automatic direct-dialed calls from a computer to an ISP. Because the dial-up is automatic, the user is not alerted to the possibility that the dial-up number is a local toll call rather than a local call, and the user does not realize there is a problem until the monthly statement arrives with a shockingly high telephone bill.

SBC Pacific Bell's argument that Complainant's recourse is with his ISP has no merit. SBC Pacific Bell has made it difficult, inconvenient, and impracticable to get accurate information distinguishing local calls from local toll calls. This information, which at one time was provided in its telephone books, has been deleted from the telephone books with the notation to call the operator. But, as we have found, calling the operator often results in misinformation.

In Decision (D.) 02-08-069 in Case (C.) 01-03-028, *et al.*, we considered these problems in relation to SBC Pacific Bell. We found that in regard to obtaining local toll information " . . . contacting the 'O' operator increases the possibility of error and is less convenient. (Finding of Fact 10.) And "substituting a less accurate and less convenient means of obtaining local toll pricing information is reasonable." (Finding of Fact 11.) (D.02-08-069 at 14.) We concluded that

SBC Pacific Bell had failed to provide just and reasonable service in violation of Pub. Util. Code § 451 (D.02-08-069 at 15), and that it should not be permitted to take advantage of its own wrong. (D.02-08-069 at 10, citing Civil Code § 3517.)

In D.02-08-069 we cancelled the local toll charges in dispute here.

Likewise, based on D.02-08-069, we cancel the \$389.70 charge in dispute. We note that in D.02-08-069, we ordered SBC Pacific Bell to restore the local/toll calling information to its telephone books but, owing to publication schedules, the restoration will take a long time, and certainly comes too late for the calls involved in this complaint.

We are satisfied that the Complainant took all reasonable steps to ensure that his dialer software was not programmed to dial the disputed toll calls to access his ISP. Moreover, the problem experienced by Complainant is not unique. The Commission has received numerous similar complaints. The responsibility for remedying the situation lies with the phone companies and the ISPs. They are the beneficiaries of the customers' dollars for dial-up Internet access, and only they have the technical expertise to fix the problem. Customers should not be held responsible for this situation. Accordingly, we reject SBC Pacific Bell's argument that Complainant should be required to pay for the toll calls in dispute.

4. Assignment of Proceeding

Susan P. Kennedy is the Assigned Commissioner and Bertram D. Patrick is the assigned Administrative Law Judge in this proceeding.

O R D E R

IT IS ORDERED that:

1. The charge of \$389.70 is cancelled
2. The \$389.70 on deposit with the Commission shall be disbursed to

Michael Klein.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.